

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

HYRUM W. ANDERSON,)	
)	
Claimant,)	IC 2003-003917
v.)	
)	
HEAD & ENGQUIST EQUIPMENT, INC.,)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
Employer,)	AND RECOMMENDATION
and)	
)	
TRAVELERS PROPERTY CASUALTY)	FILED MAY 19 2008
COMPANY OF AMERICA,)	
)	
Surety,)	
Defendants.)	
)	

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned this matter to Referee Douglas A. Donohue. He conducted a hearing in Boise on October 12, 2007. Sam Johnson represented Claimant. Eric Bailey represented Defendants. The parties presented oral and documentary evidence. They took posthearing depositions and submitted briefs. The case came under advisement on February 13, 2008. It is now ready for decision.

ISSUES

According to the Notice of Hearing, the issues to be resolved are as follows:

1. Whether Claimant's current condition was caused by the accident;
2. Whether and when Claimant reached medical stability; and
3. Whether and to what extent Claimant is entitled to medical benefits.

All other issues are reserved pending this decision.

CONTENTIONS OF THE PARTIES

Claimant contends he was injured in a one-vehicle accident at freeway speed. His pickup

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jackknifed vertically (the rear wheels of the pickup came off the ground) because the trailer he was pulling was loaded out of balance. Although wearing a seatbelt and denying he was injured at the time of the crash, he soon afterward began experiencing symptoms of injury which have not completely subsided. He still needs medical care.

Defendants contend Claimant was uninjured in the crash. Nevertheless, they paid for initial diagnostic and curative medical care. Benefits were discontinued upon Dr. Nicola's evaluation that Claimant was stable and without PPI.

EVIDENCE CONSIDERED

The record in the instant case consists of the following:

1. Hearing testimony of Claimant;
2. Claimant's Exhibits 1 – 5;
3. Defendants Exhibits 1 – 10, and
4. Posthearing depositions of Richard Radnovich, D.O., Bryan Storer, D.C., and Michael Weiss, M.D.

All objections raised in the depositions are overruled.

After considering the record and briefs of the parties, the Referee submits the following findings of fact, conclusions of law, and recommendation for review by the Commission.

FINDINGS OF FACT

1. Claimant was injured in a motor vehicle accident on March 21, 2003 while working for Employer. He had worked for Employer for just under two months. He was two months shy of his 20th birthday when the accident occurred.

2. At the scene, Claimant denied having been injured.

3. The accident occurred on a Friday. Claimant did not work further that day. He went home. Claimant first noticed pain when he awoke Saturday morning.

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4. Employer reported to Surety that on a Sunday morning telephone call, Claimant's wife stated he was unavailable because he was playing Frisbee football. On Monday morning Claimant returned to work, felt unable, and left to seek medical treatment. Employer expressed reluctance to file a workers' compensation claim for Claimant. This hearsay is not competent as a basis for any conclusion in this decision. It does, however, describe the basis for Employer's initial reluctance to file a claim.

5. Employer prepared a Form 1 dated March 27, 2003. It was filed with the Commission on April 1, 2003. Claimant prepared his own Form 1 on March 28, 2003. The legal file has no record that the Form 1 prepared by Claimant was filed with the Commission. Under Idaho Code § 72-714(3), the Referee checked with the Commission's Benefits section and reviewed its file regarding Claimant. The Form 1 prepared by Claimant was not present. The Benefits section reported that according to policy and practice, the second Form 1 if filed, should be in the file.

6. On Tuesday, March 25, 2003, a post-accident drug screen showed positive for marijuana and Claimant was terminated. There is no evidence he was under the influence at the time of the accident.

7. Claimant first saw a physician, Patrick Castellano, PA-C, on March 27, 2003. Mr. Castellano diagnosed a thoracic/lumbar strain with costochondritis, restricted Claimant to modified duty, and referred him to a chiropractor. Mr. Castellano is an assistant to Michael Weiss, M.D., and Ralph Sutherlin, D.O. All have examined Claimant in various follow-up visits.

8. Claimant visited David Price, D.C., on March 31, 2003. Claimant complained of pain in his neck, back, and left ribs, as well as numbness in his buttocks and upper arms.

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Dr. Price was particularly concerned about the possibility of rib fractures, but X-rays were negative. He treated Claimant 12 times in 30 days. Claimant did not improve as Dr. Price had hoped.

9. On May 2, 2003, Claimant underwent a lumbar MRI. It showed minimal degeneration with a circumferential to right sided disc bulge at L5-S1. The bulge caused mild right foramen compromise without obvious nerve involvement. Four years later, a repeat MRI on June 22, 2007 showed the disc abutting but not displacing the right S1 nerve sleeve. Additional degeneration was also present.

10. Claimant was treated with medication and physical therapy. Injections were considered. His complaints varied in location, nature, and intensity from visit to visit. By October 2003, Drs. Sutherlin and Weiss were recommending an IME and closure.

11. On January 15, 2004, orthopedic surgeon George Nicola, M.D., reviewed medical records and examined Claimant at Defendants' request. He found Claimant's reported symptoms "non-physiologic" and "inconsistent". He pronounced Claimant medically stable without permanent impairment.

12. In 2004, Claimant visited Miles Ranck, D.C., for treatment. Bryan Storer, D.C., had an ownership interest in the chiropractic practice of Dr. Ranck and accompanied Claimant to Dr. Nicola's evaluation. Dr. Storer is also an attorney. He currently practices law and does not treat patients. He expressed concerns about Dr. Nicola's evaluation and opinions. Dr. Storer did not independently examine or evaluate Claimant.

13. On May 9, 2006, Claimant began seeing Richard Radnovich, D.O., for treatment. Dr. Radnovich's treatment included an injection which did not significantly help. In deposition, Dr. Radnovich opined Claimant might benefit from additional medical treatment of medication,

physical therapy and possibly injections. He opined Claimant might benefit from pain management indefinitely.

14. In deposition, Dr. Weiss opined Claimant was stable when he was seen by Dr. Nicola. He noted Claimant's symptoms were more left-sided while the MRI showed a more right-sided bulge. He opined that Claimant's best chance at a productive life was to stop seeking treatment and learn to live with whatever residual pain he has. He opined that all treatment options were unlikely to help. Whether from a physical or nonphysical standpoint, further treatment was likely only to further solidify Claimant's perceptions of pain and disability.

15. No physician has suggested Claimant is a surgical candidate.

DISCUSSION AND FURTHER FINDINGS OF FACT

16. **Credibility.** Claimant is a poor historian. His testimony was factually inaccurate and inconsistent with medical records. To the extent that he recalled conversations about symptoms which are not reflected in the medical records, the medical records were considered to be more accurate.

17. **Causation.** A claimant must prove his condition likely was caused by his work in order to be eligible for any benefits under the Idaho Workers' Compensation Law. Seamans v. Maaco Auto Painting, 128 Idaho 747, 918 P.2d 1192 (1996). Proof of a possible causal link is not sufficient to satisfy this burden. Beardsley v. Idaho Forest Industries, 127 Idaho 404, 901 P.2d 511 (1995). A claimant must provide medical testimony that supports a claim for compensation to a reasonable degree of medical probability. Langley v. State, Industrial Special Indemnity Fund, 126 Idaho 781, 890 P.2d 732 (1995).

18. Despite his young age, Claimant has arthritis in his back. He also exhibits nonphysiologic complaints. The MRI findings do not well correlate with all or any part of

his alleged symptoms. The opinions of treating physicians Weiss and Sutherlin carry more weight than those of Dr. Radnovich who makes a belated appearance onto Claimant's treatment scene. Claimant failed to show it likely that his complaints after October 2003 were caused by the accident.

19. **Medical stability.** Claimant was medically stable as of Dr. Nicola's examination. Dr. Nicola's report shows careful and thorough review, examination, and analysis.

20. **Medical care benefits.** Claimant failed to show he is entitled to medical care benefits after the date of medical stability.

CONCLUSIONS OF LAW

1. Claimant suffered a strain injury in the March 21, 2003 accident. He failed to show it likely that his developing and migrating symptoms were caused by the accident.

2. Claimant was medically stable as of October 12, 2003. He failed to show he is entitled to medical benefits after that date.

RECOMMENDATION

Based upon the foregoing Findings of Fact, Conclusions of Law, and Recommendation, the Referee recommends that the Commission adopt such findings and conclusions as its own and issue an appropriate final order.

DATED this 16TH day of May, 2008.

INDUSTRIAL COMMISSION

/S/_____
Douglas A. Donohue, Referee

ATTEST:

/S/_____
Assistant Commission Secretary

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

HYRUM W. ANDERSON,)	
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Claimant,)	IC 2003-003917
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HEAD & ENGQUIST EQUIPMENT, INC.,)	ORDER
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Employer,)	
and)	
)	FILED MAY 19 2008
TRAVELERS PROPERTY CASUALTY)	
COMPANY OF AMERICA,)	
)	
Surety,)	
Defendants.)	
)	

Pursuant to Idaho Code § 72-717, Referee Douglas A. Donohue submitted the record in the above-entitled matter, together with his recommended findings of fact and conclusions of law to the members of the Idaho Industrial Commission for their review. Each of the undersigned Commissioners has reviewed the record and the recommendations of the Referee. The Commission concurs with these recommendations. Therefore, the Commission approves, confirms, and adopts the Referee's proposed findings of fact and conclusions of law as its own.

Based upon the foregoing reasons, IT IS HEREBY ORDERED that:

1. Claimant suffered a strain injury in the March 21, 2003 accident. He failed to show that his developing and migrating symptoms were caused by the accident.

2. Claimant was medically stable as of October 12, 2003. He failed to show he is entitled to medical benefits after that date.

3. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all matters adjudicated.

DATED this 19TH day of MAY, 2008.

INDUSTRIAL COMMISSION

/S/_____
James F. Kile, Chairman

/S/_____
R. D. Maynard, Commissioner

/S/_____
Thomas E. Limbaugh, Commissioner

ATTEST:

/S/_____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 19TH day of MAY, 2008 a true and correct copy of **FINDINGS, CONCLUSIONS, AND ORDER** were served by regular United States Mail upon each of the following:

D. Samuel Johnson
405 South 8th Street, Ste. 250
Boise, ID 83702

Eric S. Bailey
P.O. Box 1007
Boise, ID 83701

db

/S/_____

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